

NTSB Order No. EA-4346

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 29th day of March, 1995

Docket SE-13710

aircraft and without a current medical certificate, in violation of sections 61.3(c), 91.9(a), and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Parts 61 and 91).<sup>2</sup> As discussed below, we agree with the initial decision and, therefore, deny respondent's appeal.<sup>3</sup>

On September 13, 1992, respondent acted as pilot-in-command of a Cessna 150F, N7825G, with his stepdaughter as a passenger. Shortly after takeoff from Sussex Airport, New Jersey, the aircraft began to descend and crashed, critically injuring respondent and fatally injuring his passenger.

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<sup>2</sup>These regulations state, in pertinent part:

**§ 61.3 Requirement for certificates, rating, and authorizations.**

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(c) *Medical certificate.* ... [N]o person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter.

**§ 91.9 Civil aircraft flight manual, marking, and placard requirements.**

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.*

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>Respondent filed a brief on appeal and the Administrator filed a reply. Respondent admits that his medical certificate expired several months before the accident and has not appealed on that issue.

The Administrator alleged that, according to the operating limitations of the aircraft, the maximum gross weight of the aircraft was 1600 pounds, but the weight of the aircraft at the time of the flight was 1663.4 pounds. Therefore, respondent took off when the aircraft was not in compliance with the limits set forth in the operating specifications.

Respondent does not contest the maximum gross weight of the aircraft, the empty weight of the aircraft (1101.4 pounds), or the weight of the oil (11 pounds). He disputes the figures utilized in the Administrator's calculations, however, for the weight of respondent, his passenger, and the fuel.<sup>4</sup> According to respondent, the gross weight of the aircraft totaled 1556.4 pounds, well within the limit.

Regarding the weight of the passenger, the Administrator introduced a letter into evidence, dated October 19, 1992, from the Sussex County medical examiner, which showed that the weight of the decedent (respondent's passenger) determined at autopsy was 270 pounds. (Exhibit (Ex.) A-6.) Respondent asserted at the hearing, and asserts again now, that two weeks before the accident, the decedent told him she weighed 200 pounds.<sup>5</sup> As a result, he claims, it was reasonable to utilize this amount when

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<sup>4</sup>The Administrator asserts 191, 270, and 90 pounds, respectively, and respondent claims 178, 200, and 66 pounds.

<sup>5</sup>He stated that, in the context of an argument about her weight, his stepdaughter told him that she weighed 200 pounds. (Transcript (Tr.) at 155.) He thought she may have underestimated by about 10 to 15 pounds. *Id.* Yet despite this belief, he utilized 200 in his weight and balance computation.

computing the gross weight of the aircraft. He maintains that he "conformed with each and every requirement of standard operating practices in figuring weight and balance," and acted with reasonable care in believing that his passenger weighed no more than 215 pounds.<sup>6</sup> Respondent's brief at 3-4. Nevertheless, after evaluating the evidence, the law judge determined that respondent operated the aircraft in a manner contrary to its operating specifications.

We believe there was sufficient evidence presented at the hearing to support the law judge's determination that respondent operated the aircraft over its maximum gross weight and that this action was careless. Underestimating the passenger's weight was not a trivial mistake and, whether or not respondent was comfortable with his ability to estimate the passenger's weight,<sup>7</sup> he should have taken measures to ascertain her actual weight. At the very least, he should have asked the passenger directly, before the flight, when she likely would have been more forthcoming than she had been two weeks earlier.<sup>8</sup> That he did

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<sup>6</sup>He further argues that the letter from the county coroner should not have been received into evidence because, as double hearsay, it is inadmissible. Respondent is mistaken in his assertion. The NTSB cases excluding double hearsay were expressly overruled in Administrator v. Repacholi, NTSB Order No. EA-3888 at 5 (1993), where we explained that, just as in the evaluation of hearsay evidence, the law judge may weigh double hearsay and consider factors such as remoteness and reliability in reaching a decision. Id. at 4.

<sup>7</sup>Respondent admitted, "I'm not good at weight guessing...." (Tr. at 167.)

<sup>8</sup>Even respondent's counsel acknowledged, during closing argument, that if something leads the pilot to believe the

not intend to underestimate her weight does not make respondent's error any less careless.<sup>9</sup> Relying on a guess for the weight of a passenger he knew considerably exceeded the 170-pound standard was neither prudent nor reasonable. As pilot-in-command, he was responsible for the accurate computation of the weight and balance figures. Given our decision regarding the passenger's weight, we need not reach the issues of respondent's weight or the fuel weight.<sup>10</sup> Using respondent's figures in the calculations, the aircraft still would have been over maximum gross weight.<sup>11</sup>

(..continued)

passenger is not 170 pounds (the standard used in the aircraft manual), "it is incumbent upon the pilot to inquire of the passenger as to the passenger's actual weight." (Tr. at 193.)

<sup>9</sup>Respondent argues that the law judge erred in finding that he was careless in operating an aircraft without a valid medical certificate because the Administrator failed to disclose in discovery that it would be a basis for the 91.13(a) charge. Whether or not this is true, the finding that respondent operated an aircraft over its gross weight limit is sufficient to support a residual violation of 91.13(a).

<sup>10</sup>The Administrator introduced into evidence a letter from the attending trauma surgeon at the hospital where respondent was treated. (Ex. A-5.) The letter stated that on September 16, 1992, respondent weighed 191 pounds. Respondent disputes this weight, claiming that on September 13, 1992, the date of the accident, he weighed 178 pounds. Respondent admitted that his weight on the morning of September 16 was 190 pounds. (Tr. at 163.) He argued that although he did not eat solid food in the hospital until the evening of September 14, he did not have a bowel movement before he was weighed on the morning of September 16. We need not discuss the plausibility of his claim that he gained 12 pounds in 36 hours while hospitalized following an aircraft accident in which he was critically injured and his stepdaughter was fatally injured because, as discussed infra, n. 11, it would not have changed the outcome of the case.

<sup>11</sup>Respondent's figures were as follows:

Empty weight of aircraft	1101.4 pounds
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Finally, respondent argues that the 120-day suspension is excessive. Again, we disagree. According to the FAA's Sanction Guidance Table, a sanction of 30 to 90 days is appropriate for exceeding operating limitations; and operation without a valid medical certificate warrants 30 to 180 days. The sanction is reasonable and consistent with precedent.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The Administrator's order and the initial decision are affirmed; and
3. The 120-day suspension of respondent's airman certificate shall begin 30 days after service of this order.<sup>12</sup>

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

(..continued)

Oil	11.0 pounds
Fuel	66.0 pounds
Respondent	178.0 pounds
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	1356.4 pounds

When the weight of the passenger is added (270 pounds), the gross weight of the aircraft would have been 1626.4 pounds, still over the 1600-pound limit.

<sup>12</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).